

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

JACKIE MOSLEY

PLAINTIFF

v.

NO. 3:06cv00039 JWC

MICHAEL J. ASTRUE,
Commissioner, Social
Security Administration

DEFENDANT

ORDER

Plaintiff has filed a motion for attorney's fees and expenses pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412 (doc. 14). He seeks an EAJA award for work done at the district court level by his attorney (1.2 hours in 2006 at an hourly rate of \$162.00 and .35 hours in 2008 at an hourly rate of \$167.00), and by paralegal assistants (4.45 hours at an hourly rate of \$75.00), for a total fee award of \$586.60. Additionally, he seeks reimbursement of expenses in the amount of \$13.95. The Commissioner has responded, stating he has no objections (doc. 16).

Under the EAJA, a prevailing social security claimant is entitled to an award of reasonable attorney's fees and expenses unless the Commissioner's position in denying benefits was "substantially justified" or special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A). A claimant who obtains a favorable determination following a court's sentence-six remand, such as here, is a prevailing party entitled to EAJA fees. See *Melkonyan v. Sullivan*, 501 U.S. 89, 102-03 (1991).

The EAJA provides that attorney fees "shall not be awarded in excess of \$125.00 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii). See *Pierce v. Underwood*, 487 U.S. 552, 571 (1988). The increased rates requested by Plaintiff reflect an agreement between Plaintiff's counsel and the Office of General Counsel, Region VI, Social Security

Administration, to calculate attorney's fees on an annualized basis using the mid-year Consumer Price Index for All Urban Consumers (CPI-U) (doc. 15-2, at 1-2). Plaintiff submits the applicable CPI-U figures to support the increased rates (doc. 15-2, at 7).

Additionally, a prevailing party that satisfies EAJA's other requirements may recover its paralegal fees from the government at prevailing market rates. *Richlin Security Service v. Chertoff*, 128 U.S. 2007, 2019 (2008). Plaintiff submits affidavits to establish \$75.00 an hour as the prevailing market rate for paralegal work (doc. 15-2, at 4-6).

No objection is made to the number of attorney or paralegal hours requested or to the amount of expenses, and counsel's itemization demonstrates that they were reasonably expended in representation of Plaintiff (doc. 15-2, at 8-10).

Therefore, the Court will approve the total requested fees for attorney work (1.2 hours at \$162.00 per hour and .35 hours at \$167.00 per hour) and paralegal work (4.45 hours at \$75.00 per hour), for a fee award of \$586.60. The Court also will approve the requested expenses of \$13.95.

Accordingly, it is hereby ORDERED

(1) That Plaintiff's motion for attorney's fees and expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 (doc. 14) is granted;

(2) That Plaintiff is entitled to an award of attorney's fees in the amount of \$586.60, together with expenses of \$13.95, for a total of \$600.55, all pursuant to the EAJA; and

(3) That the Commissioner is directed to certify and pay to Anthony Bartels, attorney for Plaintiff, the amount awarded pursuant to the EAJA.

IT IS SO ORDERED this 30th day of September, 2008.


UNITED STATES MAGISTRATE JUDGE